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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1098 OF 2006

Tarun Channalal Shah ... Appellant

V/s.

The State of Maharashtra
(DCB, CID, Mumbai) ... Respondent

Mr.Ashok Mundargi for Appellant
Mr.P.H. Kantharia, APP, for Respondent

CORAM: **D.G. DESHPANDE &**
SMT.NISHITA MHATRE, JJ.

JUDGMENT RESERVED ON: **APRIL 16, 2007**
JUDGMENT PRONOUNCED ON: **APRIL __, 2007**

JUDGMENT (PER SMT.MHATRE, J.):

. This Appeal is directed against the order of the Special Court constituted under the Maharashtra Control of Organised Crime Act in Miscellaneous Application No.426 of 2005 in MCOC Special Case No.14 of 2005. The impugned order has been passed on an application under section 227 of the Criminal Procedure Code filed by the appellant for being discharged.

2. The case of the prosecution is as follows:

An Organised Crime Syndicate headed by accused No.2, Chhota Shakeel who is absconding, is indulging in various nefarious activities including contract killing, extortion, etc. The ill gotten money from such illegal activities was invested by the accused in various areas

including finance for films. Between the period 28.10.2000 and 30.11.2000 conversations between the absconding accused i.e, accused No.2 and the co-accused No.1 namely Nazim Rizvi @ Rajasaab with four others were recorded on several audio cassettes by the complainant in the present matter. According to the prosecution, the name of the appellant was referred to in the conversation between accused No.1 and the absconding accused. Based on the transcripts of the recorded conversations, a proposal was submitted to the Joint Commissioner of Police (Crime), Mumbai seeking prior approval under section 23 (1)(a) of the MCOC Act for recording information and registering a case under section 3(1)(ii), 3(2), 3(4), 3(5) and 4 of the MCOC Act. The Joint Commissioner of Police accorded sanction under section 23(2) of the MCOC Act. An FIR was lodged on 12.12.2000 against accused No.1 and the absconding accused. The accused No.1 and the absconding accused, accused Nos.3 Bharat Shah and accused No.4 Ahmed Samsudeen Mohammed Salihu @ Bhatija were, therefore, charged with having committed offences punishable under section 120-B, 302 r/w 115, 387 of Indian Penal Code and 3(1)(ii), 3(2), 3(4), 3(5) and 4 of the MCOC Act. The case was registered as MCOCA Special Case No.4 of 2001.

4. The trial was conducted against the aforesaid four accused. By judgment and order dated 1.9.2003 of the Special Court,accused No.3 Bharat Shah and accused

No.4 Bhatija were acquitted under the MCOC Act while accused No.1 Nazim Rizvi (Raja Saab) and Raheem Shaikh were convicted under the MCOC Act.

5. The Appellant who claims to be an employee of Bharat Shah was absconding from the year 2000 and surrendered before the Special Court only on 30.11.2004. He has been released on bail on 25.1.2005. On completion of investigations and after obtaining the requisite sanction from the Commissioner a chargesheet was submitted before the Special Court and the appellant has been charged for committing offences punishable under sections 120-B r/w 302, 115 of the Indian Penal Code and sections 3(1)(ii), 3(2), 3(4), 3(5) and 4 of the MCOC Act.

6. The appellant preferred an application dated 18.7.2005 under section 227 of the Criminal Procedure Code for discharge on several grounds. This application was opposed by the prosecution contending that there was sufficient material implicating the appellant. The Special Court has by the impugned order dated 16.3.2006 rejected the application for discharge.

7. The main objections raised by the prosecution to the appellants discharge application are: (i) the transcripts of the telephone conversations recorded between the absconding accused and accused No.1 refer to

one "Tarun" who according to the prosecution is the appellant; (ii) a diary found in the handwriting of the appellant contains telephone numbers and other details indicating that the appellant had a nexus with the other accused; (iii) one of the co-accused Nazim Rizvi, the accused No.1, had confessed that the name "Tarun" in the conversations recorded between him and the absconding accused was that of the appellant and; (iv) that the appellant who claimed to be an employee of accused No.3 on a monthly salary of Rs.7,500/- had established a partnership firm in the name and style of Niru Diamonds in the year 1994. This partnership firm was used as a front to channelise Hawala transactions and investigations had revealed that the firm had received foreign bills to the extent of Rs.11,67,45,694/- between the period from 14.5.1998 to 3.4.2001. In December 1997, four more persons were inducted to the partnership firm Niru Diamonds. Three of the partners of the firm were outsiders holding 55% as their stake while the other partners were members of the appellant’s family. According to the prosecution, the appellant was in fact the only active partner of this firm. The prosecution claims that from 1.7.1998 to 31.3.2000, the appellant received Rs.36,85,000/- as his share of the income from the partnership firm. The other members of his family also received substantial amounts as their share of the profits of the partnership firm. According to the prosecution, a code number was allotted by the

absconding accused for a particular transaction in which 30500 USD were sent to him by the appellant through accused No.4 Bhatija of Sembi Jewellers, Dubai. The appellant had contacted Sembi Jewellers about 86 times from the Office phone number of the accused No.3 in respect of this transaction.

8. Mr.Mundargi, learned Counsel for the appellant, submits that the transcripts of the phone conversations which have been recorded do not indicate that the person referred to as ‘Tarun’ was necessarily the appellant. He submits that ‘Tarun’ is a name which is very common and, therefore, it cannot be presumed that the conversation between the two accused referred to the appellant. As regards the diary which has been seized, he submits that the reports of the handwriting experts did not express any definite opinion regarding the authorship of the writings in the diary and, therefore, the seizure of the telephone diary cannot be considered as an incriminating circumstance against the appellant. He then urges that the co-accused Nazim Rizvi has already been tried and convicted and, therefore, his confession cannot be accepted to incriminate the appellant. The learned Counsel then submits that the growth of the firm Niru Diamonds has no nexus with the charges levelled against the appellant. He urges that the material which is relied on by the prosecution to continue the proceedings against the appellant under the

MCOC Act is not legally admissible material and would not tantamount to there being any evidence against the appellant.

9. The affidavit filed by Madhukar B. Kurne, Assistant Commissioner of Police, attached to DCB CID D-1 (South), Mumbai discloses the statement of the amounts received by Niru Diamonds between the period from 14.5.1998 to 3.4.2001 as Rs.11,67,45,694/-. The statement of the amounts received by all partners of the firm including Neeru Shah (wife of the appellant) and by the appellant himself are annexed to the affidavit. In our opinion, if as claimed by the appellant he was working with accused No.3 as an employee on a monthly salary of Rs.7,500/- and he established the firm in 1994, the extent of foreign bills received by the firm for a period of approximately 2 years from 14.5.1998 to 3.4.2001 is highly suspicious. To discharge the accused under the MCOC Act at this stage would in our opinion not be appropriate since there is some material before the Court which if proved could link the appellant to the offences alleged against him.

10. Undoubtedly, accused Nos.3 and 4 have been acquitted under the MCOC Act. However, accused No.1 and Raheem Shaikh have been convicted under the MCOC Act. It could be possible that the name "Tarun" referred to in the conversations between accused Nos.1 and 2 is not

that of the appellant as there is no material, prima facie, to indicate it is the appellant. The report of the handwriting expert also does not disclose definitevely that the diary is in the handwriting of the appellant. A confession by accused No.1 could possibly not be used against the appellant as the trials have been separated and accused No.1 has already been convicted. However, the monetary transactions shown to us by the learned A.P.P. do cast a doubt on the innocence of the accused. There is adequate material, prima facie, before the Court, which if proved, could lead to the Appellant’s conviction. The mere fact that two of the co-accused were acquitted under the MCOC Act, including the employer of the appellant herein, would not in our opinion, indicate that the appellant is innocent. In our opinion, therefore, there is material and sufficient grounds for proceeding against the appellant. Hence, we uphold the judgment of the Special Court under the MCOC Act and dismiss the appeal.

(D.G. DESHPANDE, J.)

(SMT.NISHITA MHATRE, J.)